

Panaji, 25th September, 2003 (Asvina 3, 1925)

SERIES II No. 26

OFFICIAL GAZETTE



GOVERNMENT OF GOA

SUPPLEMENT

GOVERNMENT OF GOA

Department of Labour

Order

CL/PUB-Awards/98/3089

The following Award dated 23-3-2000 in Reference No. IT/35/99 given by the Industrial Tribunal, Panaji-Goa, is hereby published as required under the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

R. S. Mardolker, Commissioner & Ex-officio Joint-Secretary (Labour).

Panaji, 15th June, 2000.

IN THE INDUSTRIAL TRIBUNAL
GOVERNMENT OF GOA
AT PANAJI

(Before Shri Ajit. J. Agni, Hon'ble Presiding Officer)

Ref. No. IT/35/99

Shri Mahadeo A. Madgaonkar,
Rep. by Goa Trade & Commercial
Workers Union,
Velho Bldg., 2nd Floor,
Panaji-Goa.

... Workman/Party I

V/s

The Managing Director,
M/s Hede and Co.,
Panaji-Goa.

... Employer/Party II

Party I/Workman represented by Adv. Shri R. Mangueshkar.

Party II/Employer - Ex-Parte.

Panaji, dated.: 22-3-2000.

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947), the Government of Goa by order dated 15th April, 1999 bearing No. IRM/CON/(98)/97/2148 referred the following dispute for adjudication by this Tribunal.

"(1) Whether the action of the employer M/s Hede and Co., Panaji-Goa, in refusing employment of Shri Mahadev A. Madgaonkar, Peon, with effect from 8-12-1997, is legal and justified?"

(2) If not, to what relief the workman is entitled?"

On receipt of the reference a case was registered under No. IT/30/99 and registered A/D notice was issued to the parties. The workman/Party I (for short, "Workman") filed his statement of claim at Exb. 3. The facts of the case as pleaded by the workman in short are that the Employer-Party II (for short, "Employer") is having its establishment at Dr. Malbarao Building, Nr. Navhind Times, Panaji, Goa and that he was employed as a watchman w.e.f. 24-8-86 and at the time of his appointment his salary was Rs. 650/- p.m. That subsequently the workman was appointed as peon and he worked as such till the date he was refused employment. That his monthly salary was paid by the employer by obtaining his signature on vouchers. That the employer illegally refused employment to him from 8-12-97 without assigning any reasons whatsoever. That at the time of refusal of employment he was not paid his legal dues. That thereafter the workman raised an industrial dispute before the Labour Commissioner and the conciliation proceedings held by the Labour Commissioner ended in failure as the employer failed to appear before him and consequently a failure report

dated 14-8-98 was submitted to the Government. The workman contended that the refusal of employment to him by the employer is illegal and bad in law and in the contravention of the provisions of Sec. 25F of the Industrial Disputes Act, 1947, as prior to the refusal of employment to him no warning, show cause notice or charge sheet was issued to him nor any enquiry was held against him. The workman therefore claimed that he is entitled to reinstatement in service with full back wages and continuity in service.

2. The employer was issued registered A/D notice requiring them to appear before this tribunal on 24-6-99 at 10.30 a. m. The employer was served with the said registered A/D notice but none appeared on its behalf and therefore after giving several opportunities the case was proceeded ex-parte against the employer on 23-8-99 and the ex-parte evidence of the workman was subsequently recorded.

3. In the present case the workman has examined only himself in support of his case, and his disposition is on record. The workman's case is that he was employed with the employer in their office at Panaji, since 1986 as a watchman and subsequently he was appointed as a peon in the year 1990 and he continued to work as such till the date of termination of his service on 8-12-97. In support of his contention that he was employed with the employer he has produced his attendance card for the month of May 1992 at Exb. W-1. He has stated that the said attendance card is signed by the Manager Mr. Madhavrao Sardessai on behalf of the employer. There is no challenge to the said attendance card. It shows that the workman was employed with the employer and he was working as peon. The workman has stated that on 8-12-97 when he reported for duty the cashier of the employer told him that his services are terminated and that a new person has been appointed as a peon. He has stated that the Goa Trade and Commercial Workers' Union of which he was a member thereafter raised a dispute on his behalf before the Dy. Labour Commissioner vide letter dated 24-1-98 and the copy of the said letter was sent to the employer. He has also produced the copy of the said letter at Exb. W-2 colly. He has also produced the copy of the minutes of the Conciliation proceedings held by the Dy. Labour Commissioner at Exb. W-3 and the failure report at Exb. W-4. The minutes of the meeting and the failure report shows that the employer did not participate in the conciliation proceedings and therefore Conciliation ended in failure. The workman has stated in his deposition that he was not given one month's notice, nor notice pay nor retrenchment compensation, nor he was issued a charge sheet nor enquiry was held against him. As mentioned earlier there is no challenge to the statement of the workman which is made on oath nor there is any challenge to the documents produced by him. The evidence on record shows that the employer did not participate even in the conciliation proceedings. I have no reason to disbelieve the statements made by

the workman before this Tribunal which are made on oath. The documentary evidence produced by the workman which are discussed above also support his case.

4. Adv. Shri Mangueshkar, the learned Advocate for the workman has contended that the employer has violated the provisions of Sec. 25F of the Industrial Disputes Act, 1947 and hence refusal of employment is illegal. Sec. 25F of the Act lays down the procedure for retrenching the services of a workman. Retrenchment is defined under Sec. 2(oo) of the Industrial Disputes Act, 1947. As per the said definition, retrenchment means termination of services of a workman for any reason whatsoever otherwise than by way of disciplinary action. In the present case services of the workman were not terminated by way of disciplinary action. The workman has stated that no chargesheet was issued to him nor any enquiry was held against him. The Workman was simply refused employment which amounts to termination of service. The case of the workman also does not fall within the exceptions laid down under the said Sec. 2(oo). Therefore refusal of employment to the workman amounts to retrenchment. As per Sec. 25F of the I. D. Act, the employer has to follow the procedure for retrenching the services of a workman. As per the said provision the services of a workman who is in continuous service for not less than one year cannot be retrenched unless he has been given one month's notice or paid one month's wages in lieu of notice and he has been paid compensation at the rate of 15 days average wage per each completed year of continuous service or any part thereof in excess of six months. The above conditions are the conditions precedent to retrenchment. Sec. 25B(2) of the Industrial Disputes Act, 1947 defines "Continuous Service". It states that a workman shall be deemed to be in continuous service under an employer for a period of one year if the workman during the period of 12 calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than 190 days in case of a workman employed below ground in a mine and 240 days in any other case. In the present case the workman in his deposition has stated that he was employed with the employer since the year 1986 and his services were terminated on 8-12-97. As mentioned earlier the case has proceeded ex-parte against the employer and consequently the deposition of the workman has gone unchallenged as also there is no counter evidence from the employer. It is therefore established that the workman worked with the employer for more than 240 days prior to 8-12-97 and hence the provisions of Sec. 25F of the Industrial Disputes Act, 1947 became applicable to the workman. The Supreme Court in the case of M/s. Avon Services Production Agency Pvt. Ltd., V/s Industrial Tribunal, Hariyana and others reported in AIR 1979 SC 170 has held that giving of notice and payment of retrenchment compensation is a condition precedent in the case of retrenchment and failure to comply with the prescribing conditions precedent for valid retrenchment in Sec. 25F renders

the order of retrenchment invalid and inoperative. The same principles are laid down by the Supreme Court in the case Gammon India Ltd, V/s Niranjan Das, reported in 1984 (1) SCC 509 and Narotam Chopra V/s Presiding Officer, Labour Court and others, reported in 1989 Supp. (2) SCC 97. In these cases the Supreme Court has held that termination of service in violation of Sec.25F of the Industrial Disputes Act, 1947 is void-ab-initio. In the present case the workman has stated that the employer did not give him one month's notice nor paid him notice pay or retrenchment compensation. There is no challenge to this statement of the workman nor there is any evidence to the contrary from the employer. This being the case there is no compliance of Sec.25F of the Industrial Disputes Act, 1947 from the employer. In the circumstances I hold that the refusal of employment to the workman by the employer with effect from 8-12-97 is illegal and unjustified.

5. Once it is held that the refusal of employment is illegal and unjustified, the next question for consideration is what relief should be granted to the workman. The Supreme Court in the case of Gammon India Ltd.(supra) and Narottam Chopra(supra) has held that if the services of a workman are terminated in violation of Sec.25F of the Industrial Disputes Act, 1947 he is entitled to reinstatement in service with full back wages and continuity in service. The same principles are laid down by the Supreme Court in the case of State Bank of India V/s M. Sundera money reported in AIR 1976 SC 1111. In the present case there is violation of Sec. 25F of the Industrial Disputes Act, 1947 on the part of the employer when the employment was refused to the workman. There is no evidence on record to show that the workman was gainfully employed after the employment was refused to him. I, therefore hold that the workman is entitled to reinstatement in service with full back wages and other consequential benefits besides continuity in service.

In the circumstances, I pass the following order.

ORDER

It is hereby held that the action of the employer M/s. Hede & Company, Panaji-Goa, in refusing employment to the workman Shri Mahadev Atmaram Madgonkar, with effect from 8-12-97 is illegal and unjustified. The workman Shri Mahadev Madgaonkar is ordered to be reinstated in service with full back wages and other consequential benefits. He shall be also entitled to continuity in service.

No order as to costs. Inform the Government accordingly.

Sd/-

(Ajit J. Agni),
Presiding Officer,
Industrial Tribunal.

Order

No. CL/Pub-Awards/98/3090

The following Award dated 24-4-2000 in Reference No. IT/35/96 given by the Industrial Tribunal, Panaji-Goa, is hereby published as required under the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

R. S. Mardolker, Commissioner & Ex-officio Joint Secretary (Labour).

Panaji, 19th June, 2000.

**IN THE INDUSTRIAL TRIBUNAL
GOVERNMENT OF GOA
AT PANAJI**

(Before Shri Ajit. J. Agni, Hon'ble Presiding Officer)

Ref. No. IT/35/96

Shri Gajanan R. Naik,
Rep. by,
K.T.C. Drivers & Allied Employees
Association,
M-25, Housing Board Colony,
Margao-Goa.

... Workman/Party I

V/s

The Personnel Manager,
M/s. Kadamba Transport Corp. Ltd.,
Panaji-Goa.

... Employer/Party II

Workman/Party I - represented by Adv. Shri Suhas Naik

Employer/Party II - Represented by Adv. Shri S. N. Joshi.

Panaji, Dated: 24-4 2000.

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) the Government of Goa by order dated 4-6-96 bearing No.28/25/96-LAB referred the following dispute for adjudication by this Tribunal.

"Whether the action of the management of M/s. Kadamba Transport Corporation Ltd., Panaji, in dismissing from the services Shri Gajanan R. Naik, Auto Mechanic, with effect from 18-6-1994 is legal and justified?

If not, to what relief the workman is entitled?"

2. On receipt of the reference a case was registered under No IT/35/96 and registered A/D notice was issued to the parties. In pursuance to the said notice the parties put in their appearance. The workman/Party I (for short, "workman") filed his statement of claim which is at Exb. 4. The facts of the case in brief as pleaded by the workman are that he was employed with the Employer/Party II (for short, "employer") as an Auto Mechanic at Margao Depot and he worked on permanent role of the employer. That he was the Vice-President of K.T.C. Drivers and Allied Employees Association and hence he was representing the cause of the workers before the management. That in the year 1993 the workers of all the three depots were having some grievances raised before the management in the form of Charter of Demands and discussions were being held with the management on the said charter of demands. That on 13th may, 1993 or thereabout he was served with the charge sheet dated 12-5-93 and thereafter he was placed under suspension by order dated 12-5-93 w.e.f. 13.5.93. That by the said order of suspension he was forbidden from entering the depot premises situated all over Goa including the Central Workshop. That by letter dated 17-5-93 he denied all the charges made against him in the charge sheet dated 12-5-93. That thereafter the employer held a domestic enquiry against him and Mr. A. A. Jog was appointed as the Inquiry Officer. That on completion of the enquiry the I. O. submitted his report dated 22-12-93 and thereafter he received a show cause notice from the employer dated 29th April, 1994 to show cause why he should not be dismissed from service as the I. O. had held him guilty of the charges of misconduct. That on receipt of the show cause notice he filed reply dated 21-5-94 pointing out the defects in the enquiry and stated that enquiry was held in violation of the principles of natural justice. That ignoring the reply given by him the employer dismissed him from service by order dated 18-6-94. The workman contended that the enquiry conducted against him was not fair, proper and impartial and it was in violation of principles of natural justice. The workman contended that the report of the Inquiry Officer is perverse and is not based on the evidence on record. The workman also contended that the termination of his service by the employer is by way of victimisation for his trade union activities. The workman therefore claim that termination of his service by the employer is illegal and unjustified. Besides being that the punishment is too harsh and disproportionate to the charges levelled against him. The workman prayed that he may be ordered to be reinstated in service with full back wages.

3. The employer filed written statement at Exb. 5. The employer stated that the workman ever since his appointment as Auto Mechanic was not taking proper interest in his work and as such he was warned from time to time. The employer stated that inspite of warnings given to him from time to time by different superior officers under whom the workman worked there was no improvement in his behaviour or work. The employer stated that on 7-5-93 at 16.30 hours the workman rushed inside the Air Conditioned Office at

Margao depot along with 10 helper mechanics and interfered with duties of Asst. Accountant Shri Kanta Gawas and Accounts Clerk Shri Zeferino Vaz and threatened them with dire consequences. That on 10-5-93 the workman unauthorisedly remained absent from 9 hours to 17.30 hours at Margao depot and on the same day he was on the gate of Porvorim depot from 10.45 hours and was instigating the workman to go on strike which resulted in cession of work at the Porvorim depot and central workshop. That on 11-5-93 the workman informed the Asst. Dy. Manager Shri Rock Luis and Foreman Shri S. K. Gaonkar that helper mechanics of Margao Depot will not be carrying out the duties of fitting of tyres, operation of diesel pumps, greasing of vehicles and issue of bills. The employer stated that the workman was therefore charge sheeted for the acts of misconduct and enquiry was conducted against him in which the workman participated fully and on completion of the enquiry the I. O. submitted his report holding that except charge No. 1 all other charges were proved against the workman. The employer stated that a show cause notice was issued to the workman and finding that his reply was unsatisfactory he was dismissed from service. The employer denied that the enquiry was conducted in a unfair or impartial manner or in violation of principles of natural justice. The employer denied that the findings of the I.O. were perverse or that the punishment awarded is too harsh and disproportionate of the charges. The employer stated the termination of the services of the workman is legal and justified and the workman is not entitled to any relief as claimed by him. Thereafter the workman filed rejoinder at Exb. 7.

4. On the pleadings of the parties issues were framed at Exb. 8 and the issues Nos. 1 and 2 were treated as preliminary issues, as the issue No. 1 was touching the fairness of the enquiry and the issue No. 2 was touching the perversity of the finding of the Inquiry Officer. After evidence was lead on the said preliminary issues this Tribunal by order dated 23-11-99 held that the domestic enquiry conducted against the workman is not fair and proper and hence the inquiry was set aside. Thereafter additional issue was framed as to whether the employer prove that the workman is guilty for charges of misconduct and the case was fixed for employer's evidence on the said issue.

5. On 2-3-2000 when the case was fixed for recording employer's evidence, both the parties submitted that the dispute between them has been settled. They filed the terms of settlement dated 2-3-2000 at Exb. 16 alongwith an application praying that consent award be passed in terms of the said settlement. I have gone through the terms of the settlement dated 2-3-2000 which are duly signed by the parties and I am satisfied that the terms of the settlement are certainly in the interest of the workman. I, therefore accept the submissions made by the parties and pass the consent award in terms of the settlement dated 2-3-2000 Exb.16.

Order

1. It is agreed between the parties that, the Workman concerned in the reference shall be re-instated in the service of the Corporation as a Auto Mechanic within seven days from the date of filing these consent terms.
2. It is agreed by the Employer/Party-II, that the party-I will be allowed continuity in service and his seniority will be maintained.
3. It is agreed between the parties that the pay scale of Party-I will be fixed at Rs. 4800/- in the pay scale of Rs. 4000-100-6000/- after release of all the annual increments due from the date of his dismissal to the date of his joining. However, the Party-I will not be entitled for any benefits or arrears/difference in wages from the date of dismissal to date of joining.
4. It is agreed between the parties that the absence from the date of dismissal i.e. 15-6-1994 to till the date of his joining will be treated as an extra-ordinary leave and hence he is not entitled for any consequential benefits.
5. It is agreed by the workman/Party No. I that he will fully co-operate with the Employer/Party No. II in maintaining the discipline and smooth functioning of the Kadamba Transport Corporation Limited (K.T.C.L) and shall co-operate fully in bringing the Corporation on sound footing.
6. It is agreed between the parties that, the claim raised in the above reference stands conclusively settled in terms of the present consent terms.

No order as to cost. Inform the Government accordingly.

Sd/-
(Ajit J. Agni),
Presiding Officer,
Industrial Tribunal.

Order

No. CL/Pub-Awards/98/2000/3458

The following Award dated 16-6-2000 in Reference No. IT/60/95 given by the Industrial Tribunal, Panaji-Goa, is hereby published as required under the provisions of

Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

R. S. Mardolker, Commissioner & Ex-officio Joint Secretary (Labour).

Panaji, 14th July, 2000.

IN THE INDUSTRIAL TRIBUNAL
GOVERNMENT OF GOA
AT PANAJI

(Before Shri Ajit. J. Agni, Hon'ble Presiding Officer)

Ref. No. IT/60/95

Shri Senmen Carvalho & Others,
Rep. By Goa Trade &
Commercial Workers Union,
Velho Building,
Panaji-Goa.

... Workman/Party I

V/s

M/s. New Era Handling Agency,
Zuari Agro Chemicals Ltd.,
Zuarinagar, Sancoale-Goa.

... Employer/Party II

Workman/Party I - Present in Person.

Employer/Party II - represented by Adv. Shri G. K. Sardesai.

Panaji, dated: 15th June 2000.

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act 1947 (Central Act 14 of 1947) the Government of Goa by order dated 2-11-95 bearing No. 28/58/95-LAB referred the following dispute for adjudication by this Tribunal.

"Whether the action of the management of M/s. New Era Handling Agency in dismissing Shri Senmen Carvalho, Tally Clerk, Shri Shekappa Harijan, Mazdoor, Amrut Naik, Mazdoor, and Sidappa Kaligod, Mazdoor, from service w.e.f. 23-11-94 is legal and justified? If not, to what relief the workman are entitled?"

2. On receipt of the reference a case was registered under No. IT/60/96 and registered A/D notice was issued to the parties. In pursuance to the said notice the parties put in their appearance. The workman/Party I (For Short,

"workman") filed their statement of claim at Exb.4. The facts of the case in brief as pleaded by the workman are that they were employed by one Mr. M. V. Rodrigues who was a contractor of Zuari Agro Chemicals Ltd. having his firm named as Modern Handling Agency and who was carrying on the contract of handling the products of Zuari Agro Chemicals Ltd. That on 1-4-93 the Employer/Party II (For short "Employer") was employed as the new contractor by Zuari Agro Chemicals Ltd. in place of Mr. M. V. Rodrigues and soon thereafter the Goa Trade and Commercial Workers Union who as representing the workers employed by Mr. M. V. Rodrigues raised a dispute with the employer for engaging all the workmen of the contractor Mr. M. V. Rodrigues with continuity of their past service and other service benefits. That accordingly an agreement was entered into between the union and employer under which all the workman were issued confirmation letter for their past service. That the workman Mr. Senmen Carvalho was employed from 1-8-85 as tally clerk; the workman Mr. Shekappa Harijan was employed from 1-5-85 as loader; the workman Shri Amrut Naik was employed from 2-5-87 as a loader and the workman Mr. Siddappa Kaligod was employed from Oct.'91 as a loader. That in the month of July '94 some labour issues arose between the management and the union giving rise to industrial unrest in the establishment of the employer and the workman Mr. Senmen Carvalho being the front ranking Trade Union activist he was issued one chargesheet on 18-6-94 followed by another chargesheet dated 20-6-94. That thereafter enquiry was conducted in respect of the each chargesheet and during the pendency of the enquiry an incident of 29-10-94 was reported against him and the other three workmen and they were suspended from 30-4-94 and were refused entry in the factory. That thereafter without any notice of enquiry a farce of enquiry was conducted by the management and the services of all the workmen were terminated on or about 23-11-94 by letter of termination dated 23-11-94. That the said letter of termination purported to be sent by registered A/D post was not received by any of the workmen. That subsequently after some days the workman received the copy of the original termination letter which was sent to them under registered A/D post and from the said letter they came to know that their services were terminated after the management completed ex-parte enquiry against them. The workman contented that the enquiry was conducted against them without they being served with the notice of the enquiry or the chargesheets issued to them. The workmen contented that the enquiry conducted against them was not fair and proper and the Enquiry Officer had closed the enquiry hastily at the instance of the management without giving fair and proper opportunity to the workmen to defend themselves in the enquiry. The workman contented that the entire incident relating to the issues of chargesheet issued to them had been fabricated by the management. The workmen contented that the findings given by the Enquiry Officer are bias and perverse. The workmen further contented that the

action of the employer in terminating their service w.e.f. 23-11-94 is illegal and unjustified and therefore they are entitled to reinstatement in service with full back wages and continuity in service.

3. The employer filed written statement at Exb. 5. At the outset the employer stated that the union namely Goa Trade and Commercial Union has no right or authority to represent the workmen. The employer admitted that workmen were employed by Mr. M. V. Rodrigues but denied that they were confirmed in service by the said contractor. The employer admitted that on being awarded the contract by Zuari Agro Chemical Ltd. there was an understanding to confer the status, of "workman" with continuity in service alongwith an other workmen employed by the employer. The employer however stated that no specific letter of confirmation was issued to any of the workmen. The employer denied that Mr. Senmen Carvalho was a front ranking trade unionist or that he was participating in the trade union activities. The employer stated that on 29-10-94 the working in the second shift commencing from 14 hours to 22 hours and they were assigned the work of loading at the D.A.P. Truck loading of M/s. Zuari Agro Chemical Ltd. The employer stated that between 4.30 p. m. and 4.45 p. m. the workmen in combination and in a concerted and pre-planned manner physically assaulted the manager Mr. Tome Carvalho with fists and blows on his face and body causing gravious injury to him and he was also abused, insulted, warned and threatened with dire consequences and physical assault and thereafter they instigated and incited the other workmen to stop the work which resulted in heavy loss to the employer. The employer stated that all the four workmen were chargesheeted on 31-10-94 for the acts of misconduct mentioned in chargesheet and subsequently enquiry was conducted into the said chargesheet which was a joint enquiry. The employer stated that the workmen were served with the chargesheet by registered A/D post as well as under certificate of posting and the notice of inquiry was also published in local newspapers. The employer stated that inspite of the notice of enquiry published in news papers the workmen failed to appear and participate in the enquiry and therefore the enquiry was concluded ex-parte. The employer stated that the Enquiry Officer submitted his finding that the charges levelled against the workmen have been proved conclusively. The employer stated that each workmen was informed about the findings of the Enquiry Officer and considering the gravity of the proved misconduct and the past record of the workmen the employer decided to dismiss the workmen from service. The employer denied that the charges against the workmen were fabricate or that the enquiry was conducted not in a fair and proper manner or that the findings of the Enquiry Officer were bias and perverse. The employer denied that their action in terminating the services of the workmen is illegal and unjustified or that the workmen are entitled to reinstatement in service with full back wages or any other relief. Workmen thereafter filed Rejoinder Exb.-6.

4. On the pleadings of the party issues were framed at Exb. 7 and thereafter the case was fixed for evidence of the workmen on preliminary issues. Since inspite of opportunity given the workmen did not lead evidence, the evidence of the workmen on preliminary issues was closed and the case was fixed for the evidence of the employer on preliminary issues. On 25-6-99 when the case was fixed for hearing the workmen appeared in person and Adv. Shri Sardessai appeared on behalf of the employer. The workmen and the employer filed an application dated 25.6.99 wherein it was stated that the workmen had authorised Goa Mazdoor Union to enter into a settlement with the employer and accordingly a settlement at 23-4-99 was arrived at between workmen, represented by Goa Mazdoor Union, and the employer. The workman and employer prayed that the Award be passed in terms of the settlement. I have gone through terms of the settlement dated 23-4-99 filed by the parties at Exb. 9. The said settlement is a general settlement concerning the workers employed by the employer. In that settlement one of the issues was pertaining to the settlement of the dispute in respect of the workmen concerned in the present reference. Clause 7 of the said settlement contains the Terms and Conditions of settlement pertaining to the said workmen. I have gone through the said Terms and Conditions and I am satisfied that they are certainly in the interest of the workmen. I therefore accept the submissions made by the parties and pass the consent Award in terms of clause 7 of the said settlement dated 23-4-99 Exb. 9.

ORDER

- a. Since Mr. Senmon Carvalho will not seek re-employment, he will be paid his final dues including gratuity i.e. gratuity for the period of service till 23-11-94, besides an ex-gratia amount at the rate of 45 days wages for every completed year of service.
- b. (i) It is agreed that Mr. Amrut Naik, Mr. Shenkappa Harijan and Mr. Sidhappa Kaligud will be re-employed. The sum of basic pay and personal pay drawn at the time of dismissal will be protected, while fitting in new scales at the time of the employment. New basic and personal pay will be as follows:

Name	Basic Pay	Personal Pay	Total
1. Amrut Naik	Rs. 526.00	Rs. 20.00	Rs. 546.00
2. Shenkappa Harijan	Rs. 570.00	Rs. 3.00	Rs. 573.00
3. Sidhappa Kaligud	Rs. 412.00	Rs. 3.00	Rs. 415.00

- (ii) The period of dismissal from the date of the dismissal till the date of re-employment will not be considered for the purpose of calculating years of service and any other service benefits/accrued out of any settlement or any law such as gratuity, leave, P. F. Bouns Thrift fund, etc.

(iii) The confirmation of service is subject to a probation period of 6 months for good conduct.

- c. In consideration of the above, concerned workmen as well as the Union and other workmen agree not to pursue the issue of their termination in any forum and treat the dispute as settled.
- d. The Management, the concerned workmen and the Union representing these persons agree to approach the Industrial Tribunal/Labour Court with a joint application and seek a no dispute award in the terms of settlement.
- e. At the request of the Union, the Management had made some payment during the period of dismissal to these four workmen for their sustenance. The Management agreed to the request of the Union not to recover the amounts from these workmen.

No order as to cost. Inform the Government accordingly.

Sd/-
(Ajit J. Agni),
Presiding Officer,
Industrial Tribunal.

Order

CL/Pub-Award/2000/6257

The following Award dated 28-11-2000 in Reference No. IT/48/98 given by the Industrial Tribunal, Panaji-Goa, is hereby published as required under the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

R. S. Mardolker, Commissioner & Ex-officio Joint Secretary (Labour).

Panaji, 15th December, 2000.

IN THE INDUSTRIAL TRIBUNAL

GOVERNMENT OF GOA

AT PANAJI

(Before Shri Ajit. J. Agni, Hon'ble Presiding Officer)

Ref. No. IT/48/98

Kum. Nutan S. Diukar,
Sakwadi,
Arpora, Bardez-Goa.

... Workman/Party I

V/s

M/s. Nilima Nets Pvt. Ltd.,
Karaswada,
Tivim Industrial Estate,
Bardez-Goa.

... Employer/Party II

Workman/Party I represented by Shri Subhas Naik.

Employer/Party II - represented by Adv. Shri R. Chodankar.

Panaji, dated: 28-11-2000

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) the Government of Goa by order dated 26th June, 1998 bearing No. IRM/CON/MAP/(72)/97/9401 referred the following dispute for adjudication by this Tribunal.

"Whether the action of the management of M/s. Nilima Nets Pvt. Limited, Thivim Industrial Estate, Karaswada, Bardez-Goa, in terminating the services of Kum. Nutan Diukar Helper, with effect from 16-6-1997 is legal and justified?

If not, to what relief the workman is entitled?"

2. On receipt of the reference a case was registered under No. IT/48/98 and registered A/D notice was issued to the parties. In pursuance to the said notice the parties put in their appearance. The Workman/Party I (for short, "Workman") filed its statement of claim at Exb. 4. The facts of the case in brief as pleaded by the workman are that she was employed with the Employer-Party II (for short, "employer") since 29-11-1993 but she was not given any letter of appointment. That she was paid consolidated salary of Rs. 920/- p. m. and from her salary Provident Fund and ESI deductions were made every month. That she worked continuously with the employer from the date of her appointment till the date of termination of her service. That on 14-6-97 she reported for work as usual but she was orally informed that her services stood terminated w.e.f. 16-6-97. That she reported for work on 16-6-97 but she was not allowed to resume the duties and she was not given any reasons for termination of her services. That she was not given one month's notice nor she was paid any retrenchment compensation though she had worked for more than 240 days prior to the termination of her service. The workman contended that the employer terminated her services in violation of the provisions of Sec.25F, 25G & 25H of the Industrial Disputes Act, 1947. The workman claimed that since termination of her services by the employer from 16-6-97 is illegal and unjustified she is entitled to be reinstated in service with full back wages and other consequential benefits.

3. After the statement of claim was filed the case was fixed for filing of the written statement by the employer. However, the parties submitted that they have amicably

settled the dispute and they filed the consent terms dated 1-7-99 at Exb. 5. The Parties prayed that consent award be passed in terms of the settlement. I have gone through the consent terms dated 1-7-99-Exb.5 which are duly signed by the parties. I am satisfied that the said consent terms are certainly in the interest of the workman. I, therefore accept the submissions made by the parties and pass the consent award in terms of the settlement dated 1-7-99 - Exb. 5.

Order

1. That Party No. II shall pay to Party No. I, a sum of rupees 14000/- (rupees fourteen thousand only) in full and final settlement of all disputes.
2. The Party No. I hereby agree and declare that they shall have no other and further claim against Party No. II of whatsoever nature including reinstatement in employment.
3. That the parties shall bear their own costs.

No order as to costs. Inform the Government accordingly.

Sd/-
(Ajit J. Agni),
Presiding Officer,
Industrial Tribunal.

Order

CL/Pub-Awards/2000/5431

The following Award dated 9-10-2000 in Reference No. IT/63/94 given by the Industrial Tribunal, Panaji-Goa, is hereby published as required under the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

R. S. Mardolker, Commissioner, Labour & Ex-Officio
Joint Secretary.

Panaji, 1st November, 2000.

IN THE INDUSTRIAL TRIBUNAL
GOVERNMENT OF GOA
AT PANAJI

(Before Shri Ajit. J. Agni, Hon'ble Presiding Officer)

Ref. No. IT/63/94

Shri S. R. Mayenkar,
House No. E-347/10,
Duler, Mapusa-Goa.

... Workman/Party I

V/s

M/s Pedro Vincent Vaz,
Municipal Market,
Mapusa-Goa.

... Employer/Party II

Workman/Party I - Represented by Adv. P. J. Kamat.

Employer/Party II - Represented by Adv. A. Nigalye.

Panaji, dated: 9th October, 2000.

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) the Government of Goa, by order dated 19-1-1994 bearing No. 28/63/93-LAB referred the following dispute for adjudication by this Tribunal.

"Whether the action of the management of M/s. Pedro Vincente Vaz, Mapusa, Goa, in refusing employment to Shri S. R. Mayenkar, Office Assistant, with effect from 8-5-1992 is legal and justified."

If not, to what relief each of the workman is entitled?"

2. On receipt of the reference, a case was registered under No. IT/63/94 and registered A/D notice was issued to the parties. In pursuance to the said notice, the parties put in their appearance. The Workman/Party I (for short, "Workman") filed the statement of claim which is at Exb. 4. The facts of the case in brief as stated by the Workman are that he was initially employed with the employer/Party II (for short, "employer") as office assistant from 1-1-64 and thereafter as a salesman. That during his long tenure of service with the employer he worked honestly and diligently. That on 22-4-92 he was assaulted by the son of the employer without any reason and provocation. He subsequently apologised to the workman for the said incident. That the employer created such a situation that the workman was unable to continue to work and therefore he submitted his resignation to the employer on 8th May, 1992 and requested that his resignation be accepted and his legal dues be paid. That since the employer failed to pay the legal dues the workman requested the Asst. Labour Commissioner, Mapusa to intervene in the matter and accordingly by letter dated 16-12-92 the Asst. Labour Commissioner, Mapusa, called both the parties in his office to settle the matter but the employer failed to attend the meeting fixed by the Asst. Labour Commissioner. That thereafter by letter dated 25th January, 1993 the workman raised an industrial dispute in the office of the Asst. Labour Commissioner about his wrongful termination of service and he stated that the employer had created a situation as a result of which he was compelled to tender his resignation on 8-5-92. That by letter dated 25-1-93 the workman had informed the employer and to the Asst. Labour Commissioner that he had withdraw his resignation dated 8-5-92 and as such he continued to be in service. That the conciliation proceedings held by the Asst. Labour Commissioner, Mapusa, ended in failure. The workman contented that the employer had not accepted

his resignation letter and the employer had failed to comply with the provisions of Labour laws while terminating and or refusing employment to him. The workman therefore prayed that the employer should be directed to reinstate him in service with full back wages and continuity in service.

3. The employer filed written statement at Exb. 5. The employer stated that the reference is null and void for non application of mind on the part of the Government because reference proceeds on the assumption of refusal of employment when infact the workman had resigned from service. The employer admitted that the workman was working as an Office Assistant with the employer from 1-1-64 but denied that subsequently he was working as a salesman and counter salesman. The employer denied that on 22-4-92 the son of the employer assaulted the workman or that he apologised to the workman for the alleged incident. The employer admitted that on 8th May, 1992 the workman submitted his resignation with a request to accept the same which was accepted with immediate effect and the same was informed to the workman vide letter dated 12-5-92 wherein he was asked to calculate his legal dues from the office of the employer during any working day. The employer stated that inspite of the said letter the workman did not collect the legal dues. The employer denied that the workman had informed to the employer that he is withdrawing his resignation letter dated 8-5-92 stating that he continued to be in service and that he demanded back wages from 23-4-92. The employer stated that the workman had already tendered his resignation which was accepted with immediate effect. It was communicated to the workman vide letter dated 12-5-92 and though he ceased to be in employment of the employer. The employer denied the contention of the workman that his resignation had not been accepted by the employer. The employer denied that any labour laws were flouted while terminating/ refusing employment to the workman. The employer stated that since the workman has resigned from service the question of terminating/refusing services to the workman did not arise. The employer stated that since the workman has given up his employment on 8-5-92 the reference was incompetent and invalid. The employer also stated that the alleged withdrawal of resignation was not made by the workman to the competent authority. The employer therefore stated that the reference was liable to be rejected and no relief can be granted in favour of the workman. The workman filed rejoinder at Exb. 6.

4. On the pleadings of the parties, issues were framed at Exb. 7. Thereafter the evidence of the workman was recorded and the case was fixed for the evidence of the employer. It was submitted on behalf of the employer that the employer does not wish to lead any oral evidence and hence the case was fixed for final arguments. At the stage of the final arguments the parties submitted that they have arrived at an amicable settlement and they filed an application dated 26-9-2000 at Exb. 17 containing the terms of the settlement and prayed that consent award be passed in terms of the said settlement. I have gone through the terms of the settlement which are duly signed

by the parties. I am satisfied that the terms of the settlement are certainly in the interest of the workman. I therefore, accept the submissions made by the parties and pass the consent award in terms of the settlement dated 26-9-2000 Exb. 17.

ORDER

1. It is agreed between the parties that the management of Party II - M/s. Pedro Vincent Vaz, Mapusa shall pay an amount of Rs. 21,350/- (rupees twenty one thousand three hundred & fifty only) to Mr. S. R. Mayekar, Party I/Workman in full and final settlement of all his legal dues.

2. It is agreed between the parties that in view of the above clause (1) the workman/Party I agrees that he is properly relieved from the services and has no claim of whatsoever nature against the management of Party II.

No order as to costs. Inform the Government accordingly.

Sd/-
(Ajit J. Agni),
Presiding Officer,
Industrial Tribunal.

Order

CL/Pub-Awards/2000/5432

The following Award dated 20-10-2000 in Reference No. IT/78/92 given by the Industrial Tribunal, Panaji-Goa, is hereby published as required under the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

R. S. Mardolker, Commissioner, Labour & Ex-officio Joint Secretary.

Panaji, 1st November, 2000.

IN THE INDUSTRIAL TRIBUNAL GOVERNMENT OF GOA AT PANAJI

(Before Shri Ajit. J. Agni, Hon'ble Presiding Officer)

Ref. No. IT/78/92

Shri Joseph Mascarenhas,
Rep. by The General Secretary,
Gomantak Mazdoor Sangh,
Ponda - Goa.

... Workman/Party I

V/s

M/s. Morning Star Confectioners
(Morning Star Bakery),
Station Road,
Margao - Goa.

... Employer/Party II

Party I represented by Adv. Shri P. B. Devari.

None present for Party II.

Panaji, dated: 20-10-2000

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) the Government of Goa by order dated 8-12-1992 bearing No. 28/26/92-LAB referred the following dispute for adjudication by this Tribunal.

- (1) Whether Shri Joseph Mascarenhas of the management of M/s. Morning Star Confectioners (Morning Star Bakery), Margao, is a workman under Section 2(s) of the Industrial Disputes Act, 1947 (Central Act 14 of 1947)?
- (2) If so, whether the action of the management of M/s. Morning Star Confectioners Pvt. Ltd. in terminating the services of Shri Joseph Mascarenhas, Decorator, with effect from 27-9-91 is legal and justified?
- (3) If the answer to (2) above is negative, to what relief the workman is entitled?

2. On receipt of the reference, a case was registered under No. IT/78/92 and registered A/D notice was issued to the parties, that is, the workman and M/s. Morning Star Confectioners Pvt. Ltd., as the order of reference mentioned the said company as the employer. In pursuance to the said notice, the parties put in their appearance. The Workman/Party I (for short, "workman") filed his statement of claim at Exb. 3. The facts of the case in brief as pleaded by the workman are that he was working with M/s. Morning Star Confectioners, as a decorator for more than 20 years. That he worked continuously till his services were terminated with effect from 27-9-91. That the employer M/s. Morning Star Confectioners, terminated his services without issuing to him any charge sheet and also without holding any enquiry. The workman thereafter raised a dispute demanding reinstatement in service with full back wages. That since the conciliation proceedings ended in failure the dispute was referred to this Tribunal for adjudication. The workman contended that termination of his service by M/s. Morning Star Confectioners Pvt. Ltd., is illegal and unjustified and therefore he is entitled to be reinstated in service with full back wages.

3. Though notice was issued to M/s. Morning Star Confectioners Pvt. Ltd., the written statement was filed on behalf of M/s. Morning Star Confectioners (for short,

Confectioners") wherein the relationship of employer-employee between the workman and the said Confectioners was denied. The confectioners stated that the reference made by the Government is without jurisdiction and or in excess of jurisdiction and therefore the reference is liable to be rejected. The Confectioners stated that it has ceased to exist long back and therefore no relief can be granted against it. The Confectioners stated that it was the Proprietary concern of Shri John Fernandes and he ceased to carry on his business from July, 1992. The Confectioners also denied that the workman was employed with it and stated that therefore the question of terminating his services did not arise. The Confectioners stated that the workman happened to be a relation of Shri J. Fernandes and taking the advantage of the relationship he duped Shri Fernandes and his wife to the tune of Rs. 75,000/-. The Confectioners also stated that the workman is not a "Workman" within the meaning of Sec. 2(s) of the Industrial disputes Act, 1947. The Confectioners stated that since there is no employer-employee relationship the question of granting any relief to the workman against it did not arise.

4. On the pleadings of the parties, issues were framed at Exb. 6. Subsequently the reference was amended by corrigendum dated 17-4-95. As per the said corrigendum the words, "M/s. Morning Star Confectioners Pvt. Ltd.," appearing in the first para and 2nd line of Item No. 2 of the schedule of the earlier Government order, were substituted by the words, "M/s. Morning Star Confectioners (Morning Star Bakery)". On receipt of the said corrigendum M/s. Morning Star Confectioners (Morning Star Bakery) (for short, "employer") filed written statement at Exb. 9. The employer stated that the reference which has been amended by the Government is not in accordance with the failure report submitted by the Conciliation Officer to the Government. The employer stated that the identity of the employer in the proposed amended reference is distinct and separate from that of the original reference and therefore the reference is not maintainable. The employer stated that the reference is illegal and void because the dispute described in the schedule No. 2 completely militates against the proposed amendment thereby rendering the proposed amendment liable for want of preciseness. The employer stated that the concern M/s. Morning Star Confectioners a proprietary concern which has ceased to function. The employer stated that the workman was never its employee, and he being the son of the sister-in-law of Mr. John Fernandes, he was accommodated in the house considering his poverty. The employer denied that the workman was paid salary of Rs. 1700/- p.m. The employer stated that because the workman misused the facilities given to him and misappropriated an amount of Rs. 60,000/- his facilities were withdrawn and he was stopped from entering the house and because of this he went to the extent of threatening Mr. John Fernandes and claiming partnership in the business. The employer denied that the workman is entitled to any relief as claimed by him. Thereafter the workman filed rejoinder at Exb. 10.

5. Since the written statement and the rejoinder was filed after the amended reference was received from the

Government, in place of the issues framed earlier, following issues were framed based on the pleadings of the parties.

1. Whether the Party I proves that he was employed with the Party II as a Decorator and his last drawn salary was Rs. 1700/- per month?
2. Whether the Party I proves that he is a "Workman" within the meaning of Sec. 2(s) of the Industrial Disputes Act, 1947?
3. Whether the Party I proves that the action of the Party II in terminating his services w.e.f. 27-9-91 is illegal and unjustified?
4. Whether the Party II proves that the reference made by the Government is null and void and hence liable to be rejected?
5. Whether Party I is entitled to any relief?
6. What Award?

6. Thereafter the workman amended his statement of claim. The workman stated that M/s. Morning Star Confectioners Pvt. Ltd., is a limited company incorporated on 4th October, 1991 and it has taken over the establishment where the workman was employed. The workman stated that the dispute was raised against M/s. Morning Star Bakery and in the conciliation proceedings the representative of the said Bakery stated that the name of the Morning Star Bakery has been changed to Morning Star Confectioners Pvt. Ltd., w.e.f. 1-7-1991. The workman relied upon the conciliation file and the report of the Labour Inspector. Though opportunity was given to the employer to file the additional written statement it was not filed and in view of the amendment of the statement of claim, following issue was framed as additional issue:

- 3A. Whether the Party I proves that the establishment of the Party II has been taken over by M/s. Morning Star Confectioners Pvt. Ltd.?

7. My findings on the issues are as follows:—

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|-----------|-----|---------------------|
| Issue No. | 1: | Does not arise. |
| Issue No. | 2: | Does not arise. |
| Issue No. | 3: | Does not arise. |
| Issue No. | 3A: | Does not arise. |
| Issue No. | 4: | In the affirmative. |
| Issue No. | 5: | In the negative. |
| Issue No. | 6: | As per order below. |

REASONS

8. Issue No. 4: This issue is taken up first because it pertains to the maintainability of the reference. The employer took up the defence in the written statement that the reference is not maintainable because the identity of the employer in the proposed amended reference that is, in the present reference is distinct and

separate from that of the original reference. The employer contended that the amended reference is not in accordance with the failure report in the conciliation proceedings submitted to the Government because the failure report mentions the dispute as between Shri Joseph Mascarenhas represented by Gomantak Mazdoor Sangh and Management of Morning Star Confectioners Pvt. Ltd. (Morning Star Bakery) whereas as per the amended reference the dispute is mentioned as with M/s. Morning Star Confectioners (Morning Star Bakery) and as such there is no industrial dispute. Adv. Shri Devari, representing the workman submitted that the burden was on the employer to prove that the reference is not maintainable. He submitted that the case has proceeded ex-parte against the employer and consequently there is no challenge to the evidence of the workman nor there is any evidence from the employer in this case, and thus the employer has failed to discharge the burden cast on it. He submitted that therefore this issue cannot be answered in favour of the employer. I do not agree with the submission of Adv. Shri Devari that because the case has proceeded ex-parte against the employer and there is no evidence from the employer, this Tribunal cannot decide the issue No. 4 in favour of the employer. In my view though there is no evidence from the employer and the workman has not been cross examined, still this Tribunal can find out whether the reference is maintainable on the basis of the evidence before it. This issue goes to the very root of the matter.

9. The original reference which was received by this Tribunal is dated 8-12-1992. In the recital of the first para of the said order it was mentioned that an industrial dispute exists between management of M/s. Morning Star Confectioners Pvt. Ltd. (Morning Star Bakery) and their workman Shri Joseph Mascarenhas represented by Gomantak Mazdoor Sangh in respect of the matter specified in the schedule. In item No. 1 of the schedule the dispute mentioned was whether Shri Joseph Mascarenhas of the management of M/s. Morning Star Confectioners (Morning Star Bakery), Margao-Goa, is a workman under Sec. 2(s) of the Industrial Disputes Act, 1947 (Central Act, 14 of 1947) whereas in the item No. 2 the dispute mentioned was whether the action of the management of M/s. Morning Star Confectioners Pvt. Ltd., in terminating the services of Shri Joseph Mascarenhas, Decorator, w.e.f. 27-9-91 is legal and justified. Thus in the original order of reference in the recital as well as in item No. 2 of the schedule the employer was mentioned as "M/s. Morning Star Confectioners Pvt. Ltd., (Morning Star Bakery)" whereas in the item No. 1 of the schedule the employer was mentioned as "M/s. Morning Star Confectioners (Morning Star Bakery)". Since there was discrepancy in the order of reference in naming the employer against whom the dispute is raised, the Government by corrigendum dated 17-4-1995 corrected the discrepancy, by amending the reference. As per the said corrigendum the words, "M/s. Morning Star Confectioners Pvt. Ltd.," appearing in 1st para and 2nd line of item No. 2 of the schedule, were substituted by the words, "M/s. Morning Star Confectioners (Morning Star Bakery)". Thus as per the reference of the Government

dispute was between the workman Shri Joseph Mascarenhas represented by Gomantak Mazdoor Sangh and M/s. Morning Star Confectioners (Morning Star Bakery). It is to be seen now whether this reference is properly made and as such it is maintainable.

10. The Government makes a reference of the dispute to the Tribunal for the purpose of adjudication of the said dispute. The Award to be passed by the Tribunal must be effective and enforceable. For this purpose there must be proper parties before the Tribunal. Reference presupposes the existence of conciliation proceedings, in which the parties who are connected with the dispute are before the Conciliation Officer. At the request of the workman, the conciliation file bearing No. IRM/CON/SG/(11)/92 was called from the office of the Dy. Labour Commissioner, Margao and was taken on record as Exb. W-3. I have gone through the said conciliation file. From the records it can be seen that the dispute was raised by Gomantak Mazdoor Sangh on behalf of the workman on 5-12-91 against M/s. Morning Star Bakery. The demand for reinstatement was made against said M/s. Morning Star Bakery. The Conciliation Officer issued notice to M/s. Morning Star Bakery and reply was filed on their behalf on 12-2-92 denying that the workman was employed with them and the employer-employee relationship was also denied. At the time when the dispute was admitted in conciliation the parties before the Conciliation Officer were the Gen. Secretary of Gomantak Mazdoor Sangh representing the workman and M/s. Morning Star Bakery represented by V. H. Pai Angle. On that day the conciliation proceedings were adjourned and fixed on 13-4-92, and on this day failure was recorded. However the minutes of the conciliation proceedings of this date show that M/s. Morning Star Confectioners Pvt. Ltd. (Morning Star Bakery) were present before the Conciliation Officer in the capacity of employer. The failure report dated 24-4-92 also shows that failure was recorded against the employer M/s. Morning Star Confectioners Pvt. Ltd., and not against M/s. Morning Star Confectioners. Infact M/s. Morning Star Confectioners were never a party to the conciliation proceedings. The workman in his evidence has stated that Morning Star Bakery was taken over by a company known as M/s. Morning Star Confectioners Pvt. Ltd., In support of his this contention he produced the Memorandum of Association and Articles of Association of the said Company at Exb. W-2. He also produced the Inspection Report dated 19-9-91 of the Labour Inspector at Exb. W-1 to show that when he was in employment the establishment was known as Morning Star Bakery. The inspection report Exb. W-1 does mentions the name of the employer as M/s. Morning Star Bakery and the name of the workman figures at Sr. 7 of the said report as the employee. From the above evidence it can be seen that the workman himself has admitted that the establishment M/s. Morning Star Bakery was not in existence as it was taken over by the Company known as "M/s. Morning Star Confectioners Pvt. Ltd.". The Memorandum of Association and Articles of Association of the said company has been produced at Exb. W-2. The certificate of Incorporation attached to the said Memorandum shows that the said company is registered with Registrar of Companies on

14th October 1991. Thereafter for all purposes the dispute ought to have been raised against the said company namely M/s. Morning Star Confectioners Pvt. Ltd." and the party to the reference ought to have been the said company.

11. The Himachal Pradesh High Court in the case of M/s. Village Papers Pvt. Ltd., V/s State of Himachal Pradesh and others reported in 1993 Lab. I. C. 99 has held that a mere demand made to the Government cannot become an industrial dispute unless it is raised by the workmen with their employer and that this demand need not be made through the Conciliation Officer who can forward it to the management and seek its reaction and further that if the reaction is negative and not forth coming and the parties remain at logger heads a dispute exists and a reference can be made. In the case of Sindhu Resettlement Corporation Ltd. V/s Industrial Tribunal of Gujrat and others reported in AIR 1968 SC 529, the Supreme Court has held that an industrial dispute, as defined, must be a dispute between employers and employees, employers and workmen and workmen and workmen. The Supreme Court has held that if no dispute at all is raised by the employees with the management any request sent by them to the Government would only be a demand by them and not an industrial dispute between them and their employer and in such an event the reference made by the Government under Sec. 10 of the Industrial Disputes Act, 1947 would not be competent. From the above decisions it therefore follows that what can be referred to the Tribunal for adjudication is an industrial dispute and a dispute would be an industrial dispute only if it is raised against the employer. This dispute may be raised directly or indirectly that is through the Conciliation Officer. In the present case the conciliation proceedings do not show that the dispute was raised against Morning Star Confectioners. The evidence of the workman also does not show that the dispute was raised against Morning Star Confectioners. The evidence of the workman shows that the dispute is raised against M/s. Morning Star Confectioners Pvt. Ltd., which is a private limited company who according to the workman had taken over Morning Star Bakery. The workman nowhere in his evidence has stated that Morning Star Confectioners and Morning Star Bakery is one and the same establishment. There is also nothing in the records of the conciliation proceedings to show that Morning Star Confectioners and Morning Star Bakery is one and same establishment. Infact there is no reference to Morning Star Confectioners in the records of the conciliation proceedings. The workman in his evidence has sought relief against M/s. Morning Star Confectioners Pvt. Ltd., and not against Morning Star Confectioners. The Memorandum of Association produced at Exb. W-2 shows that what is taken over by the M/s. Morning Star Confectioners Pvt. Ltd., is the establishment run in the name and style of "Morning Star Bakers and Confectioners" and not Morning Star Bakery as contended by the workman. There is no averment either in the statement of claim or in the evidence of the workman that "Morning Star Bakery" and "Morning Star Bakers and Confectioners" is one and the same establishment. In the light of what is discussed above, I hold that the dispute which has been referred by the Government is not an

industrial dispute as there was no demand on Morning Star Confectioners either directly or indirectly and hence the reference is null and void and not maintainable and is liable to be rejected. I, therefore answer the issue No. 4 in the affirmative.

12. Issue Nos. 1, 2, 3, and 3A: The issue No. 1 pertains to whether the workman was employed with the employer as a decorator on wages of Rs. 1700/- p.m. The issue No. 2 pertains to whether the workman is a "Workman" within the meaning of Sec. 2(s) of the Industrial Disputes Act, 1947; and the issue No. 3 pertains to whether the action of the employer in terminating the services of the workman is legal and justified. The issue No. 3A pertains to whether the Party II establishment has been taken over by M/s. Morning Star Confectioners Pvt. Ltd. Since while deciding the issue No. 4 it has been held by me that the reference of the dispute made by the Government is not maintainable, the question of deciding these issues does not arise. I, therefore answer the issue Nos. 1, 2, 3, and 3A accordingly.

13. Issue No. 5 : This issue pertains to the relief to which the workman is entitled. The question of granting any relief or not would have arisen if the reference was maintainable. Since it has been held by me that the reference itself is not maintainable, the workman is not entitled to any relief. I, therefore answer the issue No. 5 in the negative.

In the circumstances, I pass the following order.

Order

It is hereby held that the reference made by the Government is not maintainable. The reference is therefore rejected.

No order as to cost. Inform the Government accordingly.

Sd/-

(Ajit J. Agni),
Presiding Officer,
Industrial Tribunal.

Order

CL/Pub-Awards/2000/5433

The following Award dated 6-10-2000 in Reference No. IT/22/98 given by the Industrial Tribunal, Panaji-Goa, is hereby published as required under the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

R. S. Mardolker, Commissioner, Labour & Ex-Officio
Joint Secretary.

Panaji, 1st November, 2000.

IN THE INDUSTRIAL TRIBUNAL

GOVERNMENT OF GOA

AT PANAJI

(Before Shri Ajit. J. Agni, Hon'ble Presiding Officer)

Ref. No. IT/22/98

Workmen Rep. by

The President,

Fort Aguada Beach Resort Employees Union,

Walkeshwada,

Betim, Bardez-Goa.

... Workman/Party I

V/s

M/s. Fort Aguada Beach Resort,

Sinquerim,

Bardez - Goa.

... Employer/Party II

Workman/Party I represented by Shri Subhas Naik.

Employer/Party II - represented by Adv. Shri P. J. Kamat.

Panaji, dated:— 6-10-2000

AWARD PART (I)

In exercise of the powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) the Government of Goa by order dated 19th March, 1998 bearing No. IRM/CON/MAP/(35)/95/7956 referred the following dispute for adjudication by this Tribunal.

"Whether the action of the management of M/s. Fort Aguada Beach Resort, Sinquerim-Goa, in transferring the following workmen in the places shown against their names is legal and justified?

1. Shri Ashok Deulkar, Security Valet - Varnasi.
2. Shri Michael Fernandes, Waiter - Lucknow.
3. Shri Agnelo Quadros, Waiter- Agra.
4. Shri Sitaram Rathod, Head Mali - Ernakulam.
5. Shri Sham Kerkar, Trainee Asstt. Operator - Aurangabad.
6. Shri Joseph Gomes, Security Guard - Udaipur.

If not, to what relief they are entitled?"

2. On receipt of the reference, a case was registered under No. IT/22/98 and registered A/D notice was issued to the parties. In pursuance to the said notice, the parties put in their appearance. The workmen/Party I (for short, "Union") filed its statement of claim at Exb. 5. The facts of the case in brief as pleaded by the union are that the employees of the Employer-Party II (for short, "employer") are the members of the said union since the year 1977 and it is the recognised union in the establishment of the employer since that year. That on the expiry of the settlement dated 14-4-92 the union submitted a charter of demands to the employer vide letter dated 27-6-94. That since there was no positive response from the employer

to settle the charter of demands the union vide letter dated 11-11-94 served a strike notice on the employer demanding settlement of demands and withdrawal of transfer order issued to Mr. Laximan Malwankar, President of the Union. That since the settlement could not be arrived at with the employer, the Labour Commissioner intervened in the dispute with a view to amicably resolve the dispute. That due to the rigid, adamant and unhelpful attitude of the employer, there was no positive outcome. That thereafter the Asst. Labour Commissioner, Mapusa, intervened in the dispute with a view to resolve the same and a meeting was fixed on 5-12-94 in the office of the Asst. Labour Commissioner, Mapusa. That on account of the failure of the conciliation proceedings the Government of Goa vide order dated 20-12-94 referred the dispute regarding the charter of demands to the Industrial Tribunal for adjudication. That since the transfer order issued to Mr. Malwankar was not withdrawn and on the contrary the employer charge sheeted Mr. Malwankar and after holding ex-parte enquiry dismissed him from service with effect from 16-1-95, the workers went on strike w.e.f. 24-12-94 and continued till 4-4-95 and it was withdrawn w.e.f. 5-4-95 after the employer gave an oral assurance that there would be no victimisation of the employees for having participated in the strike and all the pending issues would be settled amicably. That however when the employees resumed duties on 5-4-95 the employer suspended 7 workmen with immediate effect and transferred another 8 workers to far away places in India and besides this, issued charge sheets to several other employees. That the workmen Shri Ashok Deulkar was transferred to Hotel Taj Ganges, Varanasi, vide letter dated 6-4-95; the workman Shri Michael Fernandes was transferred to Taj Residency, Lucknow vide letter dated 6-4-95; the workman Shri Agnelo Quadros was transferred to Taj View Hotel, Agra, vide letter dated 6-4-95; the workman Shri Sitaram Rathod to Taj Residency, Ernakulam vide letter dated 6-4-95; the workman Shri Sham Kerkar to Taj Residency, Aurangabad vide letter dated 6-4-95 and the workman Shri Joseph Gomes was transferred to Lake Palace Hotel, Udaipur vide letter dated 6-4-95. That the above said 6 workmen who are the parties to the present reference were transferred to Hotels owned by a different company namely the Indian Hotels Co. Ltd. That being aggrieved by the transfer orders workmen made several representations to the employer stating that the transfers were illegal, unjustified, malafide vindictive and by way of victimisation for trade union activities and requested the employer to review its decision and to permit them to resume their duties with the employer. That the employer issued charge sheets dated 24-8-95 to the workmen and conducted enquiries against them. That the union also wrote several letters to the employer demanding withdrawal of transfer orders issued to the workmen and to allow them to resume their duties immediately. That the Government referred the dispute as regards the transfer of the workmen to this Tribunal for adjudication. The Union contended that the transfer orders issued to the workmen are illegal and unjustified and that it is by way of victimisation for their trade union activities. The union therefore prayed that it may be held that the action

of the employer in transferring the 6 workmen who are the parties to the present reference to the places mentioned in the order of reference is illegal, unjustified, mala fide, vindictive and by way of victimisation for trade union activities. The union prayed that the necessary relief in the circumstances of the case be granted in favour of the workmen.

3. The employer filed written statement at Exb. 6. By way of preliminary objection the employer stated that the reference is not maintainable because the union has no locus standi to raise any dispute on behalf of the employees of the Hotel as it was not a recognised union in the establishment of the employer on the date of raising the dispute and that Fort Aguada Beach Resort Workers Association (for short, "Association") is the majority union in the Hotel and as such it is the recognised union in the establishment of the employer. The employer stated that from 24-12-94 the union resorted to illegal and unjustified strike in the Hotel which was ultimately withdrawn by the union on 1-4-95. The employer stated that in the meeting held on 1-4-95 between the union and the representative of the employer the union has agreed to withdraw the illegal and unjustified strike from 5-4-95 and it had also agreed for transfer of 8 workers and suspension of 7 workers whose names the employer was to inform to the union after the withdrawal of the strike. The employer stated that after the strike was withdrawn the union went back upon its word and instigated and incited the transferred workers not to proceed on transfer. The employer stated that since the transferred employees did not report to the place of transfer and thus disobeyed the lawful orders, charge sheets were issued to them. The employer stated that during the pendency of the demands of the transferred employees raised by the union, the workman Mr. Joseph Gomes resigned from service and all his dues were settled by the employer. The employer therefore submitted that the demands/claims made in respect of the said workman Gomes cannot be adjudicated. The employer stated that the transfer of service of a workman is an incidence of service and it has been accepted by the workman and the union for all the years and the workers were transferred within India as well as abroad in the past and there was no challenge to such transfers. The employer stated that its action of transferring the workmen was in accordance with the service rules, appointment letter as well as model standing orders and also the said action was bona fide, legal and justified. The employer denied that the transfer of the workmen is illegal, unjustified, mala fide, vindictive or by way of victimisation for their trade union activities as alleged by the union. The employer stated that the

union is not entitled to any of the relief as claimed by the union and hence the reference is liable to be rejected. The union thereafter filed rejoinder at Exb. 7.

4. On the pleadings of the parties issues were framed at Exb. 8 and thereafter fixed for the evidence of the union. On 7-8-2000, the date on which the case was fixed for the evidence of the union, Adv. P. J. Kamat, representing the employer submitted that some of the workmen had entered into settlement and as such the dispute did not survive in respect of the said workmen. He prayed for time to file proper application. Accordingly on 14-8-2000 Adv. P. J. Kamat filed the application at Exb. 15 stating that the workmen Mr. Joseph Gomes, Agnelo Quadros and Micheal Fernandes have resigned from service vide letter dated 17-6-95, 28-9-99 and 18-11-99 respectively and that their resignation letters have been accepted by the employer. In the application it was also stated that on acceptance of the resignation letters of the above said workmen they were paid their dues and they were relieved from service. The employer therefore prayed that no dispute award may be passed in respect of the above said workmen. Shri Subhas Naik, representing the union submitted that he has no objection if no dispute award is passed in respect of the above said workmen and he made an endorsement to that effect on the said application. The employer has annexed to the application the resignation letters submitted by the workmen as well as the letters of the employer accepting the resignation of the workmen. Since the workmen Mr. Joseph Gomes, Agnelo Quadros and Micheal Fernandes have resigned from service and their resignations have been accepted by the employer and they have been also paid their legal dues and are relieved from service, which is not disputed by the union, the dispute between the employer and the said workmen does not exist and consequently the reference does not survive in respect of the said workmen.

In the circumstances, I pass the following order.

ORDER

It is hereby held that the reference in respect of the workmen Mr. Joseph Gomes, Mr. Agnelo Quadros and Mr. Micheal Fernandes does not survive as the dispute does not exist.

No order as to costs. Inform the Government accordingly.

Sd/-
(Ajit J. Agni),
Presiding Officer,
Industrial Tribunal.

Order

No. CL/Pub-Awards/2000/6197

The following Award dated 29-11-2000 in Reference No. IT/28/98 given by the Industrial Tribunal, Panaji-Goa, is hereby published as required under the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

R. S. Mardolker, Commissioner, Labour & Ex-Officio
Joint Secretary.

Panaji, 13th December, 2000.

IN THE INDUSTRIAL TRIBUNAL**GOVERNMENT OF GOA****AT PANAJI**

(Before Shri Ajit. J. Agni, Hon'ble Presiding Officer)

Ref. No. IT/28/98

Workmen Rep. by President,
All Goa General Employees Union,
P. O. Box No. 90,
Vasco-da-Gama-Goa.

... Workman/Party I

V/s

M/s. Environcon,
Corlim-Goa.

... Employer/Party II

Employer/Party II represented by Adv. Shri. G. K. Sardesai.

Workmen/Party I represented by Shri P. Gaonkar.

Panaji, dated: 29-11-2000

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947, (Central Act 14 of 1947) the Government of Goa by order dated 6th April, 1998 bearing No. IRM/CON/P/(135)/98/8282 referred the following dispute for adjudication by this Tribunal.

"Whether the action of the management of M/s. Environcon, Corlim, Goa, Contractor of M/s. E. Merck India Limited, Naravaswado, Usgao, Ponda--Goa, in terminating the services of six workmen, namely S/Shri Gurudas Gaude, Vasudev Gaude, Rajesh Sawant, Pramod Mhalasekar, Joaquim Fernandes and Shyam Mhalasekar with effect from 31-3-1997 is legal and justified?

If not, to what relief the workmen are entitled?"

2. On receipt of the reference, a case was registered under No. IT/28/98 and registered A/D notice was issued to the parties. Though the Workmen/Party I were duly served with the notice they did not put in their appearance. However, Adv. Shri G. K. Sardesai appeared on behalf of the Employer/Party II. In spite of the opportunity given the Workmen/Party I did not appear and consequently no statement of claim was filed on their behalf. Thereafter Award dated 25-6-1998 was passed by this Tribunal holding that termination of the services of the Workmen/Party I w.e.f. 31-3-97 is legal and justified. Subsequently, only the workmen S/Shri Vasudev Gaude, Pramod Mhalasekar, Gurudas Gaude and Joaquim Fernandes (for short, "Workmen") filed an application dated 24-12-98 at Exb. 1 for setting aside the award dated 25-6-98 passed against them. Adv. Shri Sardesai, representing the Employer/Party II (for short, "Employer") gave no objection for setting aside the award passed against the above said workmen. Accordingly by order dated 1-7-99 the award dated 25-6-98 passed against the above said workmen was set aside. On the same date i.e. on 1-7-99 the above said workmen namely S/Shri Vasudev Gaude, Pramod Mhalasekar, Gurudas Gaude and Joaquim Fernandes filed an application stating that the dispute between them and the employer is amicably settled as per the consent terms contained in the said application. They prayed that consent award be passed in terms of the said consent terms. Adv. Shri Sardesai, representing the employer admitted that the employer has settled the dispute with the above said workmen and signed the consent terms with the workmen dated 1-7-99. He also prayed that consent award be passed in terms of the said consent terms. I have gone through the consent terms dated 1-7-99 and I am satisfied that the said terms are certainly in the interest of the workmen. I, therefore accept the submissions made by the parties and pass the consent award in terms of the consent terms dated 1-7-99.

ORDER

1. The Party II has offered the Party I the amount specified in the Annexure "A" in full and final settlement.
2. The Party II has agreed to accept the said amount in full and final settlement of all his claims in the present reference and does not wish to pursue the reference.
3. In view of the foregoing terms the parties treat the issues involved in the reference as settled and pray that an award may please be passed in terms of the consent terms.

No order as to cost. Inform the Government accordingly.

Sd/-

(Ajit J. Agni),
Presiding Officer,
Industrial Tribunal.